

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

LIBERTARIAN PARTY OF TENNESSEE,
ANTHONY WALL, GREEN PARTY OF
TENNESSEE, KATHLEEN A. CULVER,
CONSTITUTION PARTY OF TENNESSEE,
and JOAN CASTLE,

....Plaintiffs,

v.

MARK GOINS, Coordinator of
Elections for the State of Tennessee; and
TRE HARGETT, Secretary of State
for the State of Tennessee,

....Defendants.

Case No. 03: 08-0063
Judge Haynes

ATTACHMENT

PLAINTIFFS' EXHIBIT "4"

**AFFIDAVIT OF RICHARD WINGER
FEBRUARY 8, 2010**



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AFFIDAVIT OF RICHARD WINGER

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN FRANCISCO)

Richard Winger, being duly sworn, deposes and says that:

1. I am a resident of San Francisco, California, and make this Affidavit with the knowledge that it is to be used in response to Defendants' Statement of Undisputed Facts in Support of their Motion for Summary Judgment and in support of Plaintiffs' Brief in Opposition to Defendants' Motion for Summary Judgment in the above-referenced case.

2. I consider myself an expert in the field of minor political parties, independent candidates, voter registration, and election and ballot access laws in the United States, and have been so recognized by the Wall Street Journal, Time Magazine, Congressional Quarterly, and numerous Federal and State courts. I hold an A.B. Degree in Political Science from the

University of California at Berkeley, have done further graduate study in Political Science at the University of California at Los Angeles, and have written numerous articles and various publications and journals on the subject of ballot access for minor parties and independent candidates and third party political statistics.

3. As an expert witness, I have testified in Federal court in behalf of a number of ballot access lawsuits as set forth in my Curriculum Vitae attached hereto, marked Exhibit "2", and made a part of this Affidavit as though fully set forth herein. In addition, I have advised various third party and independent candidates in regard to ballot access laws. These parties and candidates include John Anderson's 1980 Independent Campaign for President, the Libertarian Party, the Prohibition Party, the Socialists Workers' Party, the National Unity Party, the Conservative Party, the New Alliance Party, the Communist Party, the American Independent Party, the Reformed Party, the Populist Party, the Green Party, and the Constitution Party. I have been accepted as an expert witness in U.S. District Courts in nine states.

4. I am familiar with the election laws of all 50 states and the District of Columbia as to ballot access for political parties and independent candidates. I am further familiar with the election results in the United States as to the major and minor political parties, and independent candidates for elective office. I have conducted research in this area for many years, and have made a particular study for the purpose of this Affidavit of the ballot access laws of the State of Tennessee, both past and present, and the history of major and minor political parties and independent candidates in Tennessee. Also, in preparation for this Affidavit, I have read and reviewed Defendants' Motion for Summary Judgment, Defendants' Statement of Undisputed Facts in Support of their Motion for Summary Judgment, Defendants' Memorandum of Law in Support of Defendants' Motion for Summary Judgment, Defendants' Exhibits in Support of their

Motion for Summary Judgment, Plaintiffs' Motion for Summary Judgment, Plaintiffs' Statement of Undisputed Facts in Support of their Motion for Summary Judgment, Plaintiffs' Brief in Support of their Motion for Summary Judgment, Plaintiffs' Exhibits in Support of their Motion for Summary Judgment, and Plaintiffs' Complaint and Defendants' Answer filed in the instant case.

5. The filing deadline for petitions for the recognition of a new political party in the State of Tennessee is rather vague. Most states have a specific filing deadline instead of a deadline which must be determined by looking at various requirements for the doing of other actions. As set forth in numbered paragraphs 7 and 8 of Defendants' Statement of Undisputed Facts in Support of their Motion for Summary Judgment, the State of Tennessee's interpretation of the qualifying deadline for the filing of petitions to obtain recognition as a statewide political party in Tennessee is the first Thursday in March. The first Thursday in March in 2010 is March 4, 2010.

6. There are no reported cases in which any federal or state court in the United States has upheld a petition deadline for the formation of new political parties with a date in March or earlier.

7. Contrary to numbered paragraphs 14, 15, 16, 17, 18, and 19 of Defendants' Statement of Undisputed Facts in Support of their Motion for Summary Judgment, Tennessee law does require that registered voters signing a petition for recognition of a new political party to state that they are members of the party.

8. In States of the United States in which there are official records of political party membership, Alaska is the only State in which the Libertarian Party has a membership of at least two and one-half percent of the last total vote for Governor.

9. In States of the United States in which there are official records of political party membership, Maine is the only State in which the Green Party has a membership of at least two and one-half percent of the last total vote for Governor.

10. In States of the United States in which there are official records of political party membership, California and Nevada are the only States in which the Constitution Party (at the appropriate time under the then affiliated names of American Independent Party for California and Independent American Party in Nevada) has a membership of at least two and one-half percent of the last total vote for Governor.

11. While the Libertarian Party of Tennessee has never had a candidate for statewide office receive at least five percent of the total number of votes cast for all gubernatorial candidates in Tennessee, the Libertarian Party has had gubernatorial candidates in other states who have received more than five percent of the total votes cast.

12. In my expert opinion, it would be nearly impossible for any minor political party to obtain ballot access in Tennessee by petitioning if the current petition deadline requirement and party membership requirement for the petition are retained. Only the Republican and Democratic parties in Tennessee currently have the strength and resources to mount a successful petition drive under the current requirements if they should ever be required to do so.

13. Twenty-one states do not have voter registration by political party. Among these states are Ohio, Tennessee, Minnesota, North Dakota, and Texas.

14. In the preparation of this Affidavit, I have consulted the pleadings in this case, the election results, ballots, and laws of Tennessee and the other 49 states and the District of Columbia, the work of other election experts, and my personal research.

Further Affiant sayeth not.

Richard Winger

Richard Winger

Subscribed and sworn to before me this 8th day of February, 2010.

Tatiana Galamez

Notary Public

Commission and Expiration:

1836301 and Feb 13, 2013

